

NTSB Order No. EA-3721

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of October, 1992

Respondent .

Docket SE-11122

5899

135.143(a), 135.293(b), and 135.343.² Specifically, the law judge found that respondent, as owner and president of Certified Aviation, Inc., knowingly conducted and, as pilot, operated 32 flights for compensation and hire when neither he nor his company had an air taxi operating certificate. Tr. at 261-262. The initial decision states that respondent:

went into this charter operation knowing full well what he was doing. He made no attempt, according to him, to find out from the local FAA office about the legality of this thing. . . . [I] am not too impressed by the fact that . . . when an FAA inspector told them that this was a bit of a no-no operation, that they ceased immediately. The operation at this point was not proving to be quite as lucrative as it started out I know we don't have anything in evidence about any of these flights being conducted recklessly . . . but we don't need that for us to find that this was a very dangerous thing to do.

Tr. at 264, 266, 267. Despite these findings, the law judge reduced the sanction from the revocation of respondent's commercial pilot certificate ordered by the Administrator to a 10-month suspension of that certificate.

Respondent has not appealed the law judge's decision.

²As pertinent, subsection 5 requires an operating certificate for Part 135 operations, subsection 29(a) requires that the business' name be on the operating certificate, subsection 33(a) requires geographic authorization to operate, subsection 143(a) requires that the aircraft and equipment meet applicable regulations, subsection 293(b) requires that pilots pass competency checks, and subsection 343 requires that crewmembers complete appropriate initial and recurrent training.

In his answer to the order, respondent admitted that he had not passed Part 135 oral or written tests or a competency check, and had not completed the training. He further admitted that the involved aircraft had not been determined to meet Part 135. Respondent argued in his defense that the operations at issue were simply a sharing of expenses not subject to Part 135 and, therefore, the cited regulations did not apply.

Rather, the Administrator appeals the sanction reduction. He argues that the law judge failed to offer the necessary reasons to reduce the sanction. Furthermore, in the circumstances of this case, he claims revocation is warranted, citing Administrator v. Golden Eagle Aviation, Inc., 1 NTSB 1028 (1971). Respondent, replying in opposition, does not attempt to distinguish Golden Eagle. Instead, he points to certain factors present here and cites other cases to support the lesser sanction adopted by the law judge.

We agree with the Administrator that the law judge erred. Where, as here, the law judge has affirmed all violations alleged in the Administrator's complaint, a reduction in the sanction requires that the law judge offer clear and compelling reasons for such reduction. Administrator v. Muzquiz, 2 NTSB 1474 (1975). No such reasons are offered here.³ Indeed, the discussion in the initial decision would lead one to believe the law judge intended to affirm the Administrator's sanction.⁴

Moreover, we can find no basis to disturb the Administrator's choice of sanction. In Administrator v. Wingo, 4

³The law judge stated only that: "This case could go either way, but I don't think, under all of the circumstances, revocation is the answer." Tr. at 268.

⁴The law judge found: "I am aware of the Golden Eagle case and I think it is close to the situation that I have got before me now. In Golden Eagle, at least they had a Part 135 certificate . . . [h]ere, we didn't have anybody that even bothered to get a certificate." Tr. at 267. Even after amending the sanction, the law judge stated: "I don't think the Respondent still realizes just how dangerous his actions were -- very dangerous -- and that is what upsets me." Tr. at 269.

NTSB 1304 (1984), we noted that the lack of qualification necessary to justify certificate revocation can be shown in two ways: where a continuing pattern of conduct shows disregard for regulations or lack of compliance disposition; or where conduct on a single flight is sufficiently egregious to demonstrate lack of qualification. Here, there is considerable evidence to show a continuing pattern of disregard for the regulations and lack of compliance disposition. Not only did respondent operate numerous air taxi flights when neither he nor the aircraft met required safety standards, he chose a co-pilot with only a private pilot certificate, and he operated into unapproved airports. Tr. at 198-199. (The law judge later found that crew was less qualified than respondent. Tr. at 266.)

No mitigating factors present themselves in the record, and the law judge's specific holdings (as opposed to her ultimate conclusion) argue against a sanction reduction. Sanction varies depending on the circumstances of each case.⁵ Thus, for example, in Administrator v. Sabar, 3 NTSB 3119 (1980), respondent was found to have operated a for-hire flight without the necessary operating authority and a 30-day suspension was imposed. In that case, respondent (who was qualified to perform the flight) undertook to fly one passenger, an individual he had previously taught and with whom he had shared expenses in the past. Respondent cites Administrator v. Jones, 2 NTSB 1869 (1975),

⁵See, e.g., Administrator v. Pearson, 3 NTSB 3837, 3838 (1981).

where a 30-day suspension was also imposed. In contrast to the instant situation, however, respondent Jones operated only four flights, had consulted an attorney prior to undertaking them, and did not have the same relationship to the carrier as respondent in this case.⁶ Golden Eagle, at the other extreme, directed revocation, following "numerous" unlicensed for-hire flights over a 2-month period, use of unqualified crew, use of an unairworthy aircraft, and operation of an overweight aircraft.

Although the circumstances of Golden Eagle were more egregious than those before us now, it is not our role to second-guess the propriety of the Administrator's chosen sanction. Instead, here we act to ensure that the sanction is not inconsistent with past precedent. Based on the cases cited as well as our own review, we cannot find that revocation is unreasonable. Indeed, most recently in Administrator v. Mealey, NTSB Order EA-3634 (1992), we affirmed the Administrator's emergency order of revocation in a similar case.

The various rationale to the contrary offered by respondent are not convincing. That no accident, incident, or injury occurred is providential and does not warrant a different result.

See Administrator v. Guy America Airways, 4 NTSB 888, 891-892

⁶Respondent's other citations are less useful. If respondent is attempting through these cases to illustrate the difference between this case and others where a threat to aviation safety was demonstrated through reckless conduct or injury to passengers, we reiterate that injury is not a prerequisite to revocation. Furthermore, respondent offers little analysis of the Board's reasoning in the cited cases. As noted in Pearson, each set of facts raises different safety and enforcement concerns.

(1983). That respondent may have had appropriate ratings for the aircraft does not eliminate his violation of many other regulations, nor does his clean record after these events permit sanction reduction. Accord Administrator v. Thompson, NTSB Order EA-3247 (1991) at footnote 9 (neither respondent's violation-free record nor good attitude justifies reduction of the sanction).

Similarly, we reject the claim that the law judge's decision should be upheld because respondent ceased the operations when advised by the FAA. See the law judge's explicit findings (Tr. at 266, 268) and Thompson, supra. Finally, the Administrator's choice not to proceed against respondent by way of an emergency order of revocation does not demonstrate that revocation is unnecessary or inappropriate. Administrator v. Wisler, NTSB Order EA-3591 (1992) at 5-6.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The initial decision is modified as set forth above; and
3. The revocation of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.⁷

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).